

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFFERY JOSEPH JEFFERSON,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. 2:16-cv-01032-RBL

ORDER AFFIRMING DEFENDANT'S  
DECISION TO DENY BENEFITS

THIS MATTER is before the Court on Plaintiff Jefferson's Complaint [Dkt. 3] for review of the Social Security Commissioner's partially favorable decision regarding disability insurance and supplemental security income benefits.

Jefferson suffers from degenerative disc disease and gout. *See* Dkt. 10, Administrative Record 620. He applied for disability insurance and SSI benefits in May 2011, alleging he became disabled beginning in November 2006. *See* AR 617-18. Those applications were denied upon initial administrative review and on reconsideration. *See* AR 617. A hearing was held before Administrative Law Judge Tom L. Morris, and the ALJ issued an unfavorable decision in September 2012. *See id.* Jefferson appealed, and this Court remanded the case for further proceedings. *See id.* The ALJ held a second hearing in September 2015. *See id.* Jefferson, represented by counsel, appeared and testified, as did a vocational expert. *See* AR 636-81.

<sup>1</sup> Nancy A. Berryhill is now the Acting Commissioner of the Social Security Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin as Defendant in this suit. The Clerk is directed to update the docket, and all future filings by the parties should reflect this change.

1 The ALJ issued a partially favorable decision, determining Jefferson to be disabled as of  
2 April 9, 2013, but not before that date. *See* AR 617-29. The Appeals Council denied Jefferson's  
3 request for review, making the ALJ's decision the final decision of the Commissioner of Social  
4 Security. *See* AR 587-90; 20 C.F.R. §§ 404.981, 416.1481. In July 2016, Jefferson filed a  
5 complaint in this Court seeking judicial review of the Commissioner's final decision. *See* Dkt. 3.  
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7 Jefferson argues that the Commissioner's decision to deny benefits before April 9, 2013,  
8 should be reversed and remanded for an award of benefits or for further administrative  
9 proceedings because the ALJ erred: (1) in evaluating Jefferson's severe impairments at step two;  
10 (2) in evaluating whether Jefferson's impairments met a listing at step three; (3) in evaluating  
11 Jefferson's testimony; and (4) in assessing Jefferson's residual functional capacity and finding  
12 him capable of performing other work available in the national economy before April 9, 2013.  
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14 The Commissioner argues that the ALJ did not err in evaluating Jefferson's severe  
15 impairments, whether they met a listing, or Jefferson's testimony, so the ALJ's RFC and step-  
16 five finding that Jefferson could perform other work were supported by substantial evidence and  
17 should be affirmed.

## 18 DISCUSSION

19 The Commissioner's determination that a claimant is not disabled must be upheld by the  
20 Court if the Commissioner applied the "proper legal standards" and if "substantial evidence in  
21 the record as a whole supports" that determination. *See Hoffman v. Heckler*, 785 F.2d 1423, 1425  
22 (9th Cir. 1986); *see also Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir.  
23 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991) ("A decision supported by  
24 substantial evidence will, nevertheless, be set aside if the proper legal standards were not applied  
25 in weighing the evidence and making the decision.") (citing *Browner v. Sec'y of Health and*  
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1 *Human Services*, 839 F.2d 432, 433 (9th Cir. 1987)).

2 Substantial evidence is “such relevant evidence as a reasonable mind might accept as  
3 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation  
4 omitted); *see also Batson*, 359 F.3d at 1193 (“[T]he Commissioner’s findings are upheld if  
5 supported by inferences reasonably drawn from the record.”). “The substantial evidence test  
6 requires that the reviewing court determine” whether the Commissioner’s decision is “supported  
7 by more than a scintilla of evidence, although less than a preponderance of the evidence is  
8 required.” *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). “If the evidence  
9 admits of more than one rational interpretation,” the Commissioner’s decision must be upheld.  
10 *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984) (“Where there is conflicting evidence  
11 sufficient to support either outcome, we must affirm the decision actually made.”) (quoting  
12 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).<sup>2</sup>

### 15 **I. Jefferson’s Severe Impairments**

16 At step two of the sequential evaluation process, “the medical severity” of a claimant’s  
17 impairments is considered. 20 C.F.R. §§ 404.1520, 416.920. If the claimant has no “severe  
18 medically determinable” impairment, then he will be found not disabled. *Id.* An impairment is  
19 “not severe” if it does not “significantly limit [the claimant’s] mental or physical abilities to do  
20 basic work activities.” 20 C.F.R. §§ 404.1520(a)(4)(iii), (c), 416.920(a)(4)(iii), (c); *see also*

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22 <sup>2</sup> As the Ninth Circuit has further explained:

23 . . . It is immaterial that the evidence in a case would permit a different conclusion than that  
24 which the [Commissioner] reached. If the [Commissioner]’s findings are supported by  
25 substantial evidence, the courts are required to accept them. It is the function of the  
26 [Commissioner], and not the courts to resolve conflicts in the evidence. While the court may  
not try the case de novo, neither may it abdicate its traditional function of review. It must  
scrutinize the record as a whole to determine whether the [Commissioner]’s conclusions are  
rational. If they are . . . they must be upheld.

*Sorenson*, 514 F.2d at 1119 n.10.

1 Social Security Ruling 96-3p, 1996 WL 374181 at \*1. The claimant has the burden of proving  
2 that his “impairments or their symptoms affect [his] ability to perform basic work activities.”  
3 *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001); *Tidwell v. Apfel*, 161 F.3d 599,  
4 601 (9th Cir. 1998).

5 The step-two inquiry, however, is a *de minimis* screening device used to dispose of  
6 groundless claims. *See Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). Once step two is  
7 resolved in a claimant’s favor, harmful error only occurs if the ALJ fails to properly analyze  
8 evidence from any impairments that shows work-related limitations beyond those assessed in the  
9 RFC. *See Hoopai v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007); *Molina v. Astrue*, 674 F.3d  
10 1104, 1115 (9th Cir. 2012) (error is harmless where it is “inconsequential to the ultimate  
11 nondisability determination”). Plaintiff has the burden of establishing that an error resulted in  
12 actual harm. *See Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012).

13 Here, regarding the contested period, the ALJ found that Jefferson had the severe  
14 impairment of degenerative disc disease at step two and continued with the sequential evaluation  
15 process. *See* AR 620. Still, Jefferson argues that the ALJ erred by failing to find a herniated disc  
16 and lumbar radiculopathy to be severe impairments and that the error is harmful because the ALJ  
17 failed to consider whether Jefferson was eligible for a closed period of disability from November  
18 2006 through May 2008. *See* Dkt. 12, pp. 4-15. Jefferson alleges that the ALJ’s exclusion of  
19 these impairments at step two affected the rest of the ALJ’s analysis. *See id.* Any such impact is  
20 discussed below.

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1 **II. Listing 1.04(A)**

2 Jefferson asserts that the ALJ erred by failing to find that he met the requirements found  
3 in 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04(A), for the contested period. *See* Dkt. 10 at  
4 13-15. The Court disagrees.

5 At step three of the sequential disability evaluation process, the ALJ must evaluate the  
6 claimant's impairments to see if they meet or medically equal any of the impairments listed in 20  
7 C.F. R. Part 404, Subpart P, Appendix 1. *See* 20 C.F.R §§ 404.1520(d), 416.920(d); *Tackett v.*  
8 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If any of the claimant's impairments meet or  
9 medically equal a listed impairment, he is deemed disabled. *See* 20 C.F.R. §§ 404.1520(d),  
10 416.920(d). The burden of proof is on the claimant to establish that his impairments meet or  
11 equal a listing. *See Tackett*, 180 F.3d at 1098.

12 Listing 1.04(A) requires:

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14 Evidence of nerve root compression characterized by neuro-anatomic distribution  
15 of pain, limitation of motion of the spine, motor loss (atrophy with associated  
16 muscle weakness or muscle weakness) accompanied by sensory or reflex loss and,  
17 if there is involvement of the lower back, positive straight-leg raising test (sitting  
and supine).

18 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04(A). The ALJ considered Jefferson's back  
19 impairments at step two and found that the medical record did not support that Jefferson met all  
20 of the requirements of listing 1.04(A), including motor loss. *See* AR 622. Jefferson argues that  
21 the evidence regarding all of his alleged back impairments establishes that he met listing 1.04(A)  
22 between November 2006 and May 2008. *See* Dkt. 10 at 13-15. Specifically, Jefferson notes that  
23 a physician found that he had motor loss in January 2007. *See id.* at 15 (citing AR 505).  
24 However, as the ALJ noted elsewhere in the decision, the bulk of the medical evidence showed  
25 that Jefferson had normal motor strength. *See* AR 624; *see also*, e.g., AR 488, 499, 501, 503,  
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1 506-08. Therefore, Jefferson does not show that he met listing 1.04(A) or that the ALJ's  
2 evaluation of his severe impairments affected the step-three analysis.

### 3 **III. Jefferson's Testimony**

4 Jefferson argues that the ALJ erred in evaluating his testimony as it applies to the  
5 contested period. *See* Dkt. 10 at 15-18. The Court disagrees.

6 Questions of credibility are solely within the control of the ALJ. *See Sample v.*  
7 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). The Court should not "second-guess" this  
8 credibility determination. *Allen*, 749 F.2d at 580. In addition, the Court may not reverse a  
9 credibility determination where that determination is based on contradictory or ambiguous  
10 evidence. *See id.* at 579. That some of the reasons for discrediting a claimant's testimony should  
11 properly be discounted does not render the ALJ's determination invalid, as long as that  
12 determination is supported by substantial evidence. *Tonapetyan v. Halter*, 242 F.3d 1144, 1148  
13 (9th Cir. 2001).  
14

15 To reject a claimant's subjective complaints, the ALJ must provide "specific, cogent  
16 reasons for the disbelief." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996) (citation omitted).  
17 The ALJ "must identify what testimony is not credible and what evidence undermines the  
18 claimant's complaints." *Id.*; *see also Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993). Unless  
19 affirmative evidence shows the claimant is malingering, the ALJ's reasons for rejecting the  
20 claimant's testimony must be "clear and convincing." *Lester*, 81 F.2d at 834.  
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22 Jefferson argues that the ALJ erred in finding that his testimony was not fully credible  
23 during the period between November 2006 and May 2008 because the ALJ's analysis focused on  
24 evidence outside of that period. *See* Dkt. 10 at 15-18. The ALJ found Jefferson's testimony not  
25 to be fully credible for several reasons, including that the record contained evidence that  
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1 Jefferson attempted to portray himself as more significantly limited than he actually was during  
2 the period at issue. *See* AR 624. Substantial evidence supports this reason for discounting  
3 Jefferson's testimony. *See* AR 348. Jefferson does not argue that this reason was in error. *See*  
4 Dkt. 10 at 15-18. Therefore, Jefferson does not show that the ALJ erred in discounting his  
5 testimony or that the ALJ's evaluation of his severe impairments affected the analysis of  
6 Jefferson's testimony.  
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#### 8 **IV. The RFC Assessment and Step-Five Finding**

9 Jefferson argues that the RFC and resulting step-five finding, as far as they apply to the  
10 contested period, are not supported by substantial evidence. *See* Dkt. 10 at 4-12. The Court  
11 disagrees.

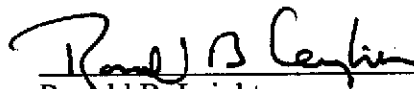
12 Jefferson argues that the RFC is unsupported by substantial evidence because the ALJ did  
13 not account for several medical diagnoses and findings by Eric S. Smith, M.D., and David E.  
14 Baker, M.D., including evidence of a herniated disc and lumbar radiculopathy. *See id.* However,  
15 none of the diagnoses and findings cited establish any specific functional limitations beyond  
16 those assessed in the RFC. *See id.* Jefferson notes that Smith opined that Jefferson was unable to  
17 return to work for a period prior to May 2008. *See id.* at 9. However, whether Jefferson could  
18 return to past work during that period is not at issue. Smith's notes from the period list no  
19 specific functional limitations that show that Jefferson's RFC, from which the ALJ found that  
20 Jefferson could perform other work, was deficient. *See* AR 481-90. Jefferson's citation of  
21 favorable pieces of the medical record simply amounts to a request that the Court reweigh the  
22 evidence, which is not the Court's role. *See Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
23 2002). Therefore, Jefferson has not established any harmful error from omitting allegedly severe  
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1 impairments at step two and has failed to show that the RFC and resulting step-five finding are  
2 unsupported by substantial evidence.

3 **CONCLUSION**

4 Based on the foregoing discussion, the Court hereby finds that the ALJ properly  
5 concluded Jefferson was not disabled. Accordingly, the Commissioner's decision to deny  
6 benefits is AFFIRMED.

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8 DATED this 7<sup>th</sup> day of February, 2017.

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11 Ronald B. Leighton  
12 United States District Judge  
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